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UNITED STATES OF AMERICA
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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 MIKAYEL HMAYAKYAN,
17 Defendant.
18

No. CR 18-760-GW-1

ORDER SETTING FORTH FACTUAL
FINDINGS PURSUANT TO
THE CARES ACT

19 Court, having read and considered the government's ex parte
20 application for an order setting forth factual findings regarding the
21 necessity of proceeding by video teleconference in this case, hereby
22 issues the following factual findings:

23 (1) On March 13, 2020, the President of the United States
24 issued a proclamation declaring a National Emergency in
25 response to the COVID-19 (Coronavirus Disease) pandemic.

26 (2) The Governor of the State of California declared a
27 Proclamation of a State of Emergency to exist in California
28 on March 4, 2020. Health Officers from Los Angeles,

1 Riverside, Orange, San Bernardino, Santa Barbara, San Luis
2 Obispo, and Ventura Counties subsequently issued local
3 emergency orders and proclamations related to public
4 gatherings.

5 (3) To date, several thousand people within the Central
6 District of California have been confirmed to be infected
7 with COVID-19 and the number of those infected continues to
8 rise, causing an emergency pandemic.

9 (4) In their continuing guidance, the Centers for Disease
10 Control and Prevention and other public health authorities
11 have suggested the public avoid social gatherings in groups
12 of more than 10 people and practice physical distancing
13 (within about six feet) between individuals to potentially
14 slow the spread of COVID-19. The virus is thought to
15 spread mainly from person-to-person contact, and no vaccine
16 currently exists.

17 (5) These social distancing guidelines -- which are essential
18 to combatting the virus -- are generally not compatible
19 with holding in-person court hearings.

20 (6) On March 27, 2020, Congress passed the Coronavirus Aid,
21 Relief, and Economic Security Act ("CARES Act"), which
22 authorized the Judicial Conference of the United States to
23 provide authority to Chief District Judges to permit
24 certain criminal proceedings to be conducted by video or
25 telephonic conference.

26 (7) Under § 15002(b) of the CARES Act, "if the Judicial
27 Conference of the United States finds that emergency
28 conditions due to the national emergency declared by the

1 President under the National Emergencies Act (50 U.S.C.
2 1601 et seq.) with respect to the Coronavirus Disease 2019
3 (COVID-19) will materially affect the functioning of either
4 the Federal courts generally or a particular district court
5 of the United States, the chief judge of a district
6 court . . . specifically finds, upon application of the
7 Attorney General or the designee of the Attorney General,
8 or on motion of the judge or justice, that felony pleas
9 under Rule 11 of the Federal Rules of Criminal Procedure
10 and felony sentencings under Rule 32 of the Federal Rules
11 of Criminal Procedure cannot be conducted in person without
12 seriously jeopardizing public health and safety, and the
13 district judge in a particular case finds for specific
14 reasons that the plea or sentencing in that case cannot be
15 further delayed without serious harm to the interests of
16 justice, the plea or sentencing in that case may be
17 conducted by video teleconference, or by telephone
18 conference if video teleconferencing is not reasonably
19 available."

20 (8) On March 29, 2020, the Judicial Conference of the United
21 States made the appropriate findings as required under the
22 CARES Act, finding specifically that "emergency conditions
23 due to the national emergency declared by the President
24 under the National Emergencies Act (50 U.S.C. § 1601, et
25 seq.) with respect to the Coronavirus Disease 2019 (COVID-
26 19) have materially affected and will materially affect the
27 functioning of the federal courts generally."
28

1 (9) On March 29, 2020, the Chief Judge of this District also
2 made the appropriate findings as required under the CARES
3 Act, finding "that felony pleas under Rule 11 of the
4 Federal Rules of Criminal Procedure and felony sentencings
5 under Rule 32 of the Federal Rules of Criminal Procedure
6 cannot be conducted in person without seriously
7 jeopardizing public health and safety. As a result, if
8 judges in individual cases find, for specific reasons, that
9 felony pleas or sentencings in those cases cannot be
10 further delayed without serious harm to the interests of
11 justice, judges may, with the consent of the defendant or
12 the juvenile after consultation with counsel, conduct those
13 proceedings by video conference, or by telephonic
14 conference if video conferencing is not reasonably
15 available."

16 (10) Through this order, I now find that the guilty-plea hearing
17 in this case cannot be further delayed without serious harm
18 to the interests of justice. My specific reasons are as
19 follows:

20 (11) On March 23, 2020, the Chief Judge of this District
21 activated The Continuity of Operations ("COOP") Plan for
22 the Central District of California.

23 (12) Under the COOP Plan, all of the Courthouses of the Central
24 District of California are closed to the public except for
25 hearings on criminal duty matters. Hearings by video and
26 telephonic conference may be held by individual Judges in
27 certain criminal matters, but Judges have no discretion to
28 hold in-person hearings

(13) The Court has extended the activation of the COOP Plan through and including June 22, 2020. C.D. Cal. General Order 20-08, In Re: Coronavirus Public Emergency, Order Concerning Phased Reopening of the Court, at 2 (May 28, 2020). This extension order also sets forth a plan for reopening, which is to occur in three phases. Phase 1 is to begin no earlier than June 1 and contemplates the return of certain staff to the courthouses to prepare for limited in-court hearings. Phase 2 is to begin no earlier than June 22, 2020 and contemplates reopening courthouses for limited in-court hearings. The last phase (Phase 3) contemplates the resumption of jury trials, but the date of this phase has not been determined. As a result, no Judge in this District will be able to hold any criminal trials or in-person hearings in criminal or civil cases until June 22, 2020 -- at the earliest, when the Court contemplates implementing Phase 2 of the reopening plan. Jury trials are unlikely to resume until even later, when the Court implements the third and final reopening phase.

(14) On April 9, 2020, the Judicial Council of the Ninth Circuit declared a judicial emergency in this District pursuant to 18 U.S.C. § 3174(d). The Judicial Council declared this emergency because, among other reasons, the Central District of California is one of the busiest judicial districts in the country.

(15) As described in the report accompanying the Judicial Council's declaration, this District currently ranks 3rd in the Ninth Circuit and 12th nationally in weighted filings,

1 with 692 weighted filings per judgeship for the 12-month
2 period ending December 31, 2019. Considering the 10
3 judicial vacancies, the adjusted weighted filings per judge
4 is 1,076. Overall, the total civil and criminal filings in
5 the District reached 16,890 in 2019.

6 (16) Prior to the Judicial Council declaring the judicial
7 emergency, the number of criminal cases filed by the U.S.
8 Attorney's Office had risen substantially over previous
9 totals. The USAO has represented that the number of AUSAs
10 in the Central District is at an all-time high, and that
11 the USAO will soon have approximately 220 AUSAs to
12 prosecute criminal cases.

13 (17) This District is authorized 27 permanent judgeships, one
14 temporary judgeship, and has 10 vacancies, the oldest of
15 which has remained unfilled since 2014. All are
16 categorized as judicial emergencies. There are eight
17 nominees pending, but due to the COVID-19 pandemic the
18 status of confirmation hearing dates remains uncertain.
19 Seven active district judges are eligible to take senior
20 status or retire immediately.

21 (18) Since 2011, this District has requested anywhere from 8 to
22 13 additional judgeships. The District has not received
23 any additional permanent or temporary judgeships since
24 1990.

25 (19) As the Judicial Conference concluded, the exceptionally
26 large number of cases pending in this District represents
27 an emergency. A vacancy on a district court is generally
28 considered an "emergency" if the court's "weighted filings"

1 exceed 600 per judgeship. The Central District of
2 California's weighted filings, 692 per judgeship (61
3 percent above the Conference standard), are high enough for
4 each Judge's caseload to be deemed an emergency.

5 (20) In normal times, these extreme caseloads can interfere with
6 the prompt resolution of cases and administration of
7 justice in this District. In an October 2019 letter to the
8 White House and Congress, the Chief Judge of this District
9 warned that "[a]s alarming as this is, the situation may
10 well worsen. Many of the active district judges on the
11 Court who are eligible to retire continue to serve, despite
12 the ever growing workload. If all of them chose to retire,
13 only eleven active judges would remain, putting at grave
14 risk our Court's ability to serve the millions of people in
15 the Central District."

16 (21) The ongoing COVID-19 pandemic will only exacerbate these
17 serious problems. As described in an April 9 Bloomberg
18 article entitled "Short-Benched U.S. Trial Courts Face
19 Post-Pandemic Crisis," districts with high caseloads and a
20 large number of judicial vacancies -- such as this District
21 -- will be challenged to deal with the huge backlog of
22 trials, hearings, sentencings, and other matters once
23 normal operations resume. In an email to Bloomberg
24 commenting on this article, the Chief Judge of this
25 District agreed that the Central District of California
26 will have a "significant backlog of trials" when normal
27 operations resume. She further expressed that the Judicial
28 Council's recent declaration was "critical for us, given

1 that all ten of our district judge vacancies have been
2 declared judicial emergencies, and that we have an
3 extremely heavy caseload."

4 (22) Given these facts, it is essential that Judges in this
5 District resolve as many matters as possible via video
6 teleconference and telephonic hearing while the COOP Plan
7 remains in effect. By holding these hearings now, this
8 District will be in a much better position to work through
9 the backlog of criminal and civil matters once in-person
10 hearings resume.

11 (23) I therefore conclude that the guilty-plea hearing in this
12 case cannot be further delayed without serious harm to the
13 interests of justice. If the Court were to delay this
14 hearing until it can be held in-person, it would only add
15 to the enormous backlog of criminal and civil matters
16 facing this Court, and every Judge in this District, when
17 normal operations resume.

18 (24) In addition, in this specific case, the guilty-plea hearing
19 in this case cannot be further delayed without serious harm
20 to the interests of justice because prolonging the case
21 unnecessarily would be unfair to the victims and would
22 delay any restitution order.

23 (25) Based on this form and the representations made to me by
24 the parties, the defendant in this case consents to proceed
25 with his guilty-plea hearing by video teleconference.

26 (26) Based on the findings above, and my authority under
27 § 15002(b) of the CARES Act, the guilty-plea hearing in
28

1 this case will be conducted by video teleconference as soon
2 as possible.

3
4 IT IS SO ORDERED.

5
6 June 25, 2020

7 _____
8 DATE



9 THE HONORABLE GEORGE H. WU
10 UNITED STATES DISTRICT JUDGE

11
12 Presented by:

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14 _____
15 /s/
16 POONAM G. KUMAR
17 Assistant United States Attorney
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